

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEREK MATTHEWS,

Plaintiff,

v.

PINCHBACK, et al.,

Defendants.

No. 2:22-cv-1329-DJC-CSK-P

ORDER

Plaintiff, a state prisoner proceeding through counsel, filed this civil rights action on July 27, 2022. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 26, 2024, the Magistrate Judge filed findings and recommendations herein which were served on all Parties and which contained notice to all Parties that any objections to the findings and recommendations were to be filed within fourteen days. (ECF No. 83.) Plaintiff filed timely objections. (ECF No. 84.)

In accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the Court has conducted a *de novo* review of this case. Having carefully reviewed the filings, the Court finds the majority of the findings and recommendations are supported by the record and by proper analysis. Accordingly, the Court will adopt the findings and recommendations in part.

1           However, the Court declines to adopt the Magistrate Judge's recommendation  
2           that Plaintiff's state law claims for sexual assault and battery and intentional infliction of  
3           emotional distress against Defendants Sysmobath, Tout, and Does 1-10 be dismissed.  
4           In relevant part, Plaintiff alleges that, from May 2015 through October 2015, he was  
5           sexually harassed and assaulted by Defendant Pinchback. (ECF No. 64 ¶¶ 5, 26-30.)  
6           Plaintiff alleges that, on or about October 15, 2015, the sexual misconduct was  
7           discovered by a prison employee and reported to prison authorities. (*Id.* ¶ 31.) That  
8           same day, Plaintiff alleges he was detained and questioned concerning the sexual  
9           misconduct. (*Id.* ¶¶ 32-36.) During the questioning, Plaintiff alleges the investigators  
10          implied that, instead of Plaintiff being the victim, Plaintiff may have been the one who  
11          raped Defendant Pinchback. (*Id.* ¶ 33.)

12          Following the interrogation, Plaintiff alleges he was taken to a room where he  
13          was handcuffed and shackled. (*Id.* ¶ 36.) Plaintiff alleges Defendant Sysmobath and  
14          Does 1-10 "forcefully pulled down [Plaintiff's] underwear and administered a  
15          procedure on [his] penis." (*Id.*) Defendant Sysmobath "inserted an object into  
16          [Plaintiff's] penis, causing [him] immense pain." (*Id.*) Plaintiff alleges Defendants  
17          purportedly performed this "non-consensual penetration of [Plaintiff's] penis" in order  
18          to obtain Defendant Pinchback's DNA from Plaintiff's body. (*Id.* ¶ 37.) However,  
19          Plaintiff alleges that the procedure served "no investigatory purpose," but instead  
20          "was intended solely to humiliate, degrade, and intimidate [Plaintiff] and cause cruel  
21          and extreme pain and suffering for retaliatory and sadistic purposes." (*Id.*) Plaintiff  
22          claims Defendant Sysmobath performed this procedure in the presence of Defendant  
23          Tout and while Defendant Tout held down Plaintiff's arms. (*Id.* ¶ 38.) Based on these  
24          allegations, Plaintiff asserts claims for sexual assault and battery and intentional  
25          infliction of emotional distress against Defendants Sysmobath, Tout, and Does 1-10.<sup>1</sup>  
26          (*Id.* ¶¶ 135-60.)

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27          <sup>1</sup> Although Plaintiff brings causes of action for negligence and negligent infliction of emotional distress  
28          against all Defendants, his allegations as to these causes of action pertain only to Defendant Price. (See

1 The Magistrate Judge recommends these claims be dismissed for two reasons:  
 2 (1) the claims are time-barred and (2) Plaintiff failed to file a government tort claim  
 3 before bringing this case. (ECF No. 83 at 34-37, 40-43, 50-51.) For the reasons set  
 4 forth below, the Court disagrees, and finds that Plaintiff's claims for sexual assault and  
 5 battery and intentional infliction of emotional distress are timely and Plaintiff is  
 6 excused from filing a government tort claim as to these claims. Thus, the claims will  
 7 not be dismissed.

8 **I. Plaintiff's State Law Claims Against Defendants Sysmobath, Tout, and**  
 9 **Does 1-10 Are Subject to a Ten-Year Statute of Limitations**

10 California's statute of limitations for personal injury claims is two years. Cal. Civ.  
 11 Proc. Code § 335.1. California tolls the statute of limitations during imprisonment for  
 12 up to two years under certain conditions, including when a person is "imprisoned on a  
 13 criminal charge, or in execution under the sentence of a criminal court for a term of  
 14 less than for life." Civ. Proc. Code § 352.1(a). Because Plaintiff was incarcerated at all  
 15 relevant times, Plaintiff had at least four years to bring his state law claims.

16 However, Plaintiff contends that his state law claims are subject to a ten-year,  
 17 not four-year, statute of limitations because they fall under the revival provisions of  
 18 California Civil Procedure Code section 340.16. (See ECF No. 81 at 14-15.) Section  
 19 340.16 provides, in relevant part, "any civil action for recovery of damages suffered as  
 20 a result of sexual assault" shall be commenced within "10 years from the date of the  
 21 last act, attempted act, or assault," and that any action seeking to recover damages  
 22 suffered as a result of a sexual assault "based upon conduct that occurred on or after  
 23 January 1, 2009, and is commenced on or after January 1, 2019 . . . [is] hereby revived  
 24 and may be commenced until December 31, 2026." Civ. Proc. Code § 340.16(a),  
 25 (b)(3). Plaintiff brought his state law claims against Defendants Sysmobath, Tout, and  
 26 Does 1-10 on July 27, 2022, based on allegations they sexually assaulted him on

27 \_\_\_\_\_  
 28 ECF No. 64 ¶¶ 161-168.) Thus, the Court finds Plaintiff has not asserted claims for negligence and  
 negligent infliction of emotional distress against Defendants Sysmobath and Tout.

1 October 15, 2015. Thus, Plaintiff argues these claims are timely because they were  
2 filed after January 1, 2019, and were brought within ten years of the October 15,  
3 2015, accrual date. (ECF No. 81 at 13.)

4 Further, Plaintiff argues his allegations meet the definition of sexual assault in  
5 the statute. Section 340.16 defines “sexual assault” as any of the crimes described in  
6 California Penal Code sections 243.4, 261, 264.1, 286, 287, or 289. Civ. Proc. Code  
7 § 340.16(b)(1). Penal Code section 243.4(a) defines sexual battery as touching the  
8 intimate part of another person, while unlawfully restrained,<sup>2</sup> against their will for the  
9 specific purpose of sexual arousal, sexual gratification, or sexual abuse. The California  
10 Court of Appeal has held that sexual abuse, as used in Penal Code section 243.4,  
11 includes non-consensual touching of a person’s intimate body part “for the purpose of  
12 insulting, humiliating, or intimidating” that person. *In re Shannon T.*, 144 Cal. App. 4th  
13 618, 622 (2006) (“*Shannon T.*”). Thus, Plaintiff argues his allegations against  
14 Defendants Sysmobath, Tout, and Does 1-10 qualify as sexual battery under Penal  
15 Code section 243.4(a) because the procedure on his penis served no investigatory  
16 purposes and was sadistic sexual contact intended solely to humiliate, degrade, and  
17 intimidate him. (ECF No. 81 at 15 (citing ECF No. 64 ¶¶ 37, 64, 93, 116, 143, 152).)

18 The Magistrate Judge disagreed with Plaintiff, finding that Plaintiff had not  
19 alleged sexual battery as defined in section 243.4 because there was no sexual  
20 purpose for Defendants Sysmobath, Tout, and Does 1-10’s actions. (See ECF No. 83  
21 at 36-37.) Rather, the Magistrate Judge found that Defendants had performed the  
22 procedure on Plaintiff’s penis for a non-sexual, investigatory purpose—to obtain DNA  
23 from Plaintiff’s body. (*Id.*) In particular, the Magistrate Judge contrasted the facts of  
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25 <sup>2</sup> Although Penal Code section 243.4(a) refers to unlawful restraint, lawful restraint can become unlawful  
26 when the original lawful purpose is replaced with or supplemented by an unlawful purpose. See  
27 *People v. Alford*, 235 Cal. App. 3d 799, 802-4 (1991) (holding a correctional officer who sexually  
28 assaulted two female inmates on different occasions while the women were physically restrained and  
being transported from one correctional facility to another was properly convicted of sexual battery  
under section 243.4 given that the correctional officer restrained the women not solely for the purpose  
of transporting them but also to enable him to commit sexual batteries against them).

1 this case with *Shannon T.*, reasoning “[P]laintiff’s allegations regarding [D]efendants  
2 Sysmobath and Tout do not involve a sexual touching or provide a sexual context like  
3 that found in the surrounding circumstances cited in *Shannon T.*, 144 Cal. App. 4th at  
4 622-23.” (*Id.* at 36.) Thus, the Magistrate Judge found that Plaintiff’s claims were  
5 subject to a four-year, not ten-year, statute of limitations. (*Id.* at 37.)

6 However, the Court finds this reading of *Shannon T.* too narrow. In *Shannon T.*,  
7 a 14-year-old boy approached a 16-year-old girl at school, directed that she get off  
8 the phone, called her “[his] ho,” and then after the girl walked away from him, saying  
9 “whatever,” slapped her face, grabbed her arm, and pinched her breast, causing her  
10 to cry and leaving a large bruise. 144 Cal. App. 4th at 620. The boy challenged the  
11 juvenile court’s subsequent sexual battery finding, arguing there was no specific intent  
12 because he and the victim had simply been “engaged in ‘playful hitting’ of each  
13 other.” *Id.* at 621. After observing that the statute, Penal Code section 243.4, did not  
14 define “sexual abuse” and that no published case had addressed the issue, the  
15 appellate court concluded that “‘sexual abuse’ includes the touching of a woman’s  
16 breast, without consent, for the purpose of insulting, humiliating, or intimidating the  
17 woman, even if the touching does not result in actual physical injury.” *Id.* at 622. The  
18 court affirmed the juvenile court’s finding, concluding that “the minor’s purpose in  
19 pinching the victim’s breast [could] be inferred from the act itself together with its  
20 surrounding circumstances” and that the “circumstances support[ed] a conclusion that  
21 the minor pinched the girl’s breast for the specific purpose of insulting, humiliating,  
22 intimidating, and even physically hurting her.” *Id.* at 622-23. Thus, *Shannon T.* does  
23 not hold that a “sexual context” is required to establish sexual abuse. Touching  
24 another’s intimate body part without their consent for the purpose of insulting,  
25 humiliating, and intimidating them is enough.

26 Here, Plaintiff alleges his penis was penetrated without his consent, purportedly  
27 to obtain Defendant Pinchback’s DNA from Plaintiff’s body. (ECF No. 64 ¶ 37.)  
28 However, Plaintiff alleges this procedure was unnecessary because the DNA could

1 have been obtained in less intrusive ways and Defendants had other evidence a  
2 sexual encounter had taken place between Plaintiff and Defendant Pinchback,  
3 including an eyewitness account. (*Id.*) Further, the procedure was conducted  
4 immediately after Plaintiff was questioned about the sexual misconduct, during which  
5 the investigators implied that Plaintiff may have raped Defendant Pinchback. (*Id.*  
6 ¶ 33.) Thus, Plaintiff contends there was no investigatory purpose served by the  
7 penetration of his penis; rather, the procedure was conducted “solely to humiliate,  
8 degrade, and intimidate him” in order to penalize him for the suspected rape. (*Id.*  
9 ¶ 37.) Based on the standard set forth in *Shannon T.*, the Court finds these allegations  
10 plausibly support a claim for sexual battery under Penal Code section 243.4(a). The  
11 statute of limitations for Plaintiff’s sexual assault and battery claim is ten years.

12 Plaintiff’s other state law claim for intentional infliction of emotional distress is  
13 also premised upon his sexual assault and battery allegations against Defendants  
14 Sysmobath, Tout, and Does 1-10. (See *id.* ¶¶ 155-160). Thus, this claim benefits from  
15 the ten-year statute of limitations as well. See *Acevedo v. eXp Realty, LLC*, 713 F.  
16 Supp. 3d 740, 790-92 (C.D. Cal. 2024) (finding that section 340.16, by its terms, is not  
17 limited to *claims* of sexual assault, but applies to *any action* seeking damages as a  
18 result of sexual assault, and holding an intentional infliction of emotional distress claim  
19 was revived under section 340.16(b)(3) along with a sexual battery claim because  
20 plaintiffs alleged defendants caused plaintiffs emotional distress by “subjecting them  
21 to forceful sexual touching and assault,” meaning plaintiffs sought to “recover  
22 damages that [they] would not have suffered, but for their sexual assault”).

23 Accordingly, the Court holds Plaintiff’s claims for sexual assault and battery and  
24 intentional infliction of emotional distress against Defendants Sysmobath, Tout, and  
25 Does 1-10 are timely as they were filed within the ten-year statute of limitations under  
26 California Civil Procedure Code section 340.16.

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**II. Plaintiff is Excused from Filing a Government Tort Claim for his State Law Causes of Action against Defendants Sysmobath, Tout, and Does 1-10**

Under the California Government Claims Act, California Government Code sections 810 *et seq.*, a plaintiff may not bring a suit for monetary damages against a public employee or entity unless the plaintiff first presents the claim to the California Victim Compensation and Government Claims Board, and the Board acts on the claim, or the time for doing so expires. Compliance with this “claim presentation requirement” constitutes an element of a cause of action for damages against a public entity or official. *State v. Superior Ct.*, 32 Cal. 4th 1234, 1244 (2004). However, under Government Code section 945.9(a), “[a] claim arising out of an alleged sexual assault by a law enforcement officer” is exempt from the requirement to file a government tort claim “if the alleged assault occurred while the officer was employed by a law enforcement agency.” Cal. Gov’t Code § 945.9(a).

Here, Plaintiff alleges Defendants Sysmobath, Tout, and Does 1-10 sexually assaulted him while employed as law enforcement officers with the California Department of Corrections and Rehabilitation and/or California Prison Industry Authority. (ECF No. 64 ¶¶ 7-10, 36-38.) Thus, Plaintiff argues he is exempt from the government tort claim presentation requirement for his claims arising out of Defendants’ alleged sexual assault. (ECF No. 81 at 16-17.)

The Magistrate Judge found that “the alleged actions or omissions of [D]efendants Sysmobath and Tout did not take place in a sexual context, and therefore [P]laintiff’s state law claims against Sysmobath and Tout are not exempt under § 945.9(a) from the claim presentation requirement of the California Government Claims Act.” (ECF No. 83 at 43.) However, as held in Section I *supra*, Plaintiff has plausibly alleged a timely sexual assault and battery claim against Defendants Sysmobath, Tout, and Does 1-10.

Accordingly, the Court finds that section 945.9(a) applies and excuses Plaintiff from the claim presentation requirement imposed by the Government Claims Act.

**CONCLUSION**

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations (ECF No. 83) are ADOPTED in part.
2. CDCR Defendants' Motion to Dismiss (ECF No. 80) is GRANTED in part as follows:
  - a. Plaintiff's Fourth and Eighth Amendment claims against Defendants Price, Sysmobath, Tout, and Does 1-10 are dismissed based on Plaintiff's concession that such claims are time-barred;
  - b. Plaintiff's First Amendment claims against Defendants Price, Sysmobath, Tout, and Does 1-10 are dismissed as time barred;
  - c. Plaintiff's claims for negligence and negligent infliction of emotional distress against Defendants Price and Does 1-10 are dismissed as barred by the statute of limitations and based on Plaintiff's failure to file a government tort claim as required by California Government Code section 911.2 and failure to submit a request to file a late government tort claim as required under California Government Code section 911.4; and
  - d. Dismissal of these claims is without leave to amend because amendment would be futile.
3. CDCR Defendants' Motion to Dismiss (ECF No. 80) is DENIED in part as follows:
  - a. Plaintiff's claims for sexual assault and battery and intentional infliction of emotional distress against Defendants Sysmobath, Tout, and Does 1-10 will not be dismissed as they are timely and Plaintiff's failure to file a government tort claim as required by California Government Code section 911.2 is excused under California Government Code section 945.9(a).

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4. Defendant Pinchback's Motion to Dismiss (ECF No. 69) is GRANTED as follows:

a. Plaintiff's state law claims against Defendant Pinchback are dismissed due to Plaintiff's failure to file a government tort claim as required by California Government Code section 911.2 and failure to submit a request to file a late government tort claim as required under California Government Code section 911.4; and

b. Dismissal of these claims is without leave to amend because amendment would be futile.

5. This case shall proceed on Plaintiff's claims for sexual assault and battery and intentional infliction of emotional distress against Defendants Sysmobath, Tout, and Does 1-10 only.

IT IS SO ORDERED.

Dated: **December 20, 2024**

  
Hon. Daniel J. Calabretta  
UNITED STATES DISTRICT JUDGE

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